

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE VALVE ANTITRUST LITIGATION

NO. 2:21-CV-00563-JCC

**INTERVENOR APEIROGON GAMES'
OPPOSITION TO VALVE'S MOTION TO
SEAL**

Intervenor Apeirogon Games respectfully opposes Defendant Valve Corporation's ("Valve") motion to seal (Dkt. No. 198) (the "Motion to Seal") for the reasons stated in Intervenor Jason Brooks and Robert Austin McCuistion's Opposition to Valve's Motion to Seal (Dkt. No. 209) (the "Consumer Opposition") and, to the extent there is overlap, for the reasons stated in Plaintiffs' Opposition to Valve's Motion to Seal (Dkt. No. 210) ("Plaintiffs' Opposition").¹ Apeirogon submits this memorandum to outline the reasons that unsealing the documents identified in the Consumer Opposition and Plaintiffs' Opposition would be important to absent members of the developer class, and therefore in the public interest.

Intervenor Apeirogon Games is a small, independent game developer who publishes games on Steam, including *Beast Mode: Night of the Werewolf Silver Bullet Edition* and *Silhouette: Chapter One*. Ryan Decl. ¶¶ 4-5. Apeirogon has sold games on the Steam Store from 2016 to the present and has had to pay Valve a 30% commission on all of its sales in that time. *Id.* at ¶ 6. As a result, Apeirogon Games is an absent member of the putative class in this action. (Dkt. No. 200-1 at 4 (defining putative class as "[a]ll persons or entities who, directly or

¹ Under LCR 5(g)(8), "[a] non-party seeking access to a sealed document may intervene in a case for the purpose of filing a motion to unseal the document."

1 through an agent, paid a commission to Valve in connection with the sale or use of a game on
2 the Steam platform on or after January 28, 2017, and continuing through the present . . . “).) As
3 an absent class member, Apeirogon has a potential claim based on the conduct of Valve as
4 alleged in the complaint and as evidenced by the materials submitted by Plaintiff in support of
5 class certification. Apeirogon believes that it may have suffered damages by paying
6 supracompetitive commissions caused by Valve’s anticompetitive conduct.

7 As an absent class member of a Rule 23(b)(3) class, Apeirogon is entitled to request
8 exclusion from the class to pursue their claims on their own if they should so choose. FRCP
9 23(b)(3). In order to make the decision to stay or opt-out of the class, Apeirogon must be able
10 to evaluate, among other things, the strength of its claims and the evidence the class intends to
11 present on its behalf. Apeirogon cannot make that determination based on full information if
12 the most significant evidence in the case remains under seal. Apeirogon has a specific interest
13 in the public disclosure of the material Valve seeks to keep under seal. Moreover, this joinder
14 of the Consumer Opposition and Plaintiffs’ Opposition is timely given that the public interest
15 and fact that materials at issue remain under seal and are/or are heavily redacted. *See, e.g.,*
16 *Kamakana v. City of County of Honolulu*, 477 F.3d 1172, 1176 (9th Cir. 2006) (motion to
17 intervene and seek unsealing is timely as long as documents remain under seal given public’s
18 interest in open access). For these reasons, and for the reasons stated in the Consumer
19 Opposition and Plaintiffs’ Opposition, Valve’s request to seal the documents and testimony
20 identified in Exhibit A to the Consumer Opposition should be denied.

1 RESPECTFULLY SUBMITTED AND DATED this 3rd day of April, 2024.

2 TERRELL MARSHALL LAW GROUP PLLC

3 *I certify that this memorandum contains 529 words,*
4 *in compliance with the Local Civil Rules.*

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